

Social Security Administration

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if any of your ineligible spouse's current monthly income is deemed to you and, if so, to determine countable income for a couple. Next, we follow paragraph (e) of this section to determine your child's eligibility. However, if none of your spouse's income is deemed to you, none is deemed to your child. Whether or not your spouse's income is deemed to you in determining your eligibility, we determine your benefit amount as explained in §416.1163(e).

(e) *Determining your child's eligibility and amount of benefits.* (1) If you are eligible for SSI benefits after your spouse's income has been deemed to you, we do not deem any income to your child. To determine the child's eligibility, we subtract the child's own countable income without deeming from the benefit rate for an individual.

(2) If you are not eligible for SSI benefits after your ineligible spouse's income has been deemed to you, we deem to your eligible child any of your spouse's income which was not used to reduce your SSI benefits to zero.

(f) *Examples.* These examples show how we deem income to an eligible individual and an eligible child in the same household. The Federal benefit rates used are those effective January 1, 1984.

Example 1. Mary, a blind individual, lives with her husband, John, and their disabled child, Peter. Mary and Peter have no income, but John is employed and earns \$605 per month. We determine Mary's eligibility first. Since John's income is more than \$157, which is one-half of the Federal benefit rate for an eligible individual, we treat the entire \$605 as earned income available to John and Mary as a couple. Because they have no unearned income, we reduce the \$605 by the \$20 general income exclusion, and then by the earned income exclusion of \$65 plus one-half the remainder. This leaves John and Mary with \$260 in countable income. The \$260 countable income is less than the \$472 Federal benefit rate for a couple, so Mary is eligible; therefore, there is no income to be deemed to Peter.

Example 2. Al, a disabled individual, resides with his ineligible spouse, Dora, and their disabled son, Jeff. Al and Jeff have no income, but Dora is employed and earns \$1,065 a month. Since Dora's income is more than \$157, which is one-half of the Federal benefit rate for an eligible individual, we treat the entire \$1,065 as earned income available to Al and Dora as a couple. We reduce this income

by the \$20 general income exclusion and then by \$65 plus one-half the remainder (earned income exclusion), leaving \$490 in countable income. Al is ineligible because the couple's \$490 countable income exceeds the \$472 Federal benefit rate for a couple. Since Al is ineligible, we deem to Jeff \$18, the amount of income over and above the amount which causes Al to be ineligible (the difference between the countable income and the Federal benefit rate for a couple). We treat the \$18 deemed to Jeff as unearned income, and we apply the \$20 general income exclusion, reducing Jeff's countable income to zero. Jeff is eligible.

[45 FR 65547, Oct. 3, 1980, as amended at 50 FR 48578, Nov. 26, 1985; 52 FR 8887, Mar. 20, 1987; 64 FR 31975, June 15, 1999]

§416.1166a How we deem income to you from your sponsor if you are an alien.

Before we deem your sponsor's income to you if you are an alien, we determine how much earned and unearned income your sponsor has under §416.1161(b). We then deduct allocations for the sponsor and the sponsor's dependents. This is an amount equal to the Federal benefit rate for an individual for the sponsor (or for each sponsor even if two sponsors are married to each other and living together) plus an amount equal to one-half the Federal benefit rate for an eligible individual for each dependent of the sponsor. An ineligible dependent's income is not subtracted from the sponsor's dependent's allocation. We deem the balance of the income to be your unearned income.

(a) *If you are the only alien applying for or already eligible for SSI benefits who has income deemed to you from your sponsor.* If you are the only alien who is applying for or already eligible for SSI benefits and who is sponsored by your sponsor, all the deemed income is your unearned income.

(b) *If you are not the only alien who is applying for or already eligible for SSI benefits and who has income deemed from your sponsor.* If you and other aliens applying for or already eligible for SSI benefits are sponsored by the same sponsor, we deem the income to each of you as though you were the only alien sponsored by that person. The income deemed to you becomes your unearned income.

(c) *When you are an alien and income is no longer deemed from your sponsor.* If you are an alien and have had your sponsor's income deemed to you, we stop deeming the income with the month in which the third anniversary of your admission into the United States occurs.

(d) *When sponsor deeming rules do not apply to you if you are an alien.* If you are an alien, we do not apply the sponsor deeming rules to you if—

(1) *You are a refugee.* You are a refugee admitted to the United States as the result of application of one of three sections of the Immigration and Nationality Act: (1) Section 203(a)(7), effective before April 1, 1980; (2) Section 207(c)(1), effective after March 31, 1980; or (3) Section 212(d)(5);

(2) *You have been granted asylum.* You have been granted political asylum by the Attorney General of the United States; or

(3) *You become blind or disabled.* If you become blind or disabled as defined in §416.901 (at any age) after your admission to the United States, we do not deem your sponsor's income to you to determine your eligibility for SSI benefits beginning with the month in which your disability or blindness begins. However, to determine your benefit payment, we follow the rule in §416.420 of counting your income in the second month prior to the current month.

(e) *Examples.* These examples show how we deem a sponsor's income to an eligible individual who is an alien when none of the exceptions in §416.1160(b)(2) applies. The income, income exclusions, and the benefit rates are in monthly amounts. The Federal benefit rates are those effective January 1, 1986.

Example 1. Mr. John, an alien who has no income, has been sponsored by Mr. Herbert who has monthly earned income of \$1,300 and unearned income of \$70. Mr. Herbert's wife and three children have no income. We add Mr. Herbert's earned and unearned income for a total of \$1,370 and apply the allocations for the sponsor and his dependents. Allocations total \$1,008. These are made up of \$336 (the Federal benefit rate for an eligible individual) for the sponsor, plus \$672 (one-half the Federal benefit rate for an eligible individual, \$168 each) for Mr. Herbert's wife and three children. The \$1,008 is subtracted from

Mr. Herbert's total income of \$1,370 which leaves \$362 to be deemed to Mr. John as his unearned income. Mr. John's only exclusion is the \$20 general income exclusion. Since the \$342 balance exceeds the \$336 Federal benefit rate, Mr. John is ineligible.

Example 2. Mr. and Mrs. Smith are an alien couple who have no income and who have been sponsored by Mr. Hart. Mr. Hart has earned income of \$1,350 and his wife, Mrs. Hart, who lives with him, has earned income of \$150. Their two children have no income. We combine Mr. and Mrs. Hart's income (\$1,350+\$150=\$1,500). We deduct the allocations of \$336 for Mr. Hart (the Federal benefit rate for an individual) and \$504 for Mrs. Hart and the two children (\$168 or one-half the Federal benefit rate for an eligible individual for each), a total of \$840. The allocations (\$840) are deducted from the total \$1,500 income which leaves \$660. This amount must be deemed independently to Mr. and Mrs. Smith. Mr. and Mrs. Smith would qualify for SSI benefits as a couple in the amount of \$504 if no income had been deemed to them. The \$1,320 (\$660 each to Mr. and Mrs. Smith) deemed income is unearned income to Mr. and Mrs. Smith and is subject to the \$20 general income exclusion, leaving \$1,300. This exceeds the couple's rate of \$504 so Mr. and Mrs. Smith are ineligible for SSI benefits.

Example 3. Mr. Bert and Mr. Davis are aliens sponsored by their sister Mrs. Jean, who has earned income of \$800. She also receives \$250 as survivors' benefits for her two minor children. We do not consider the \$250 survivors' benefits to be Mrs. Jean's income because it is the children's income. We exclude \$336 for Mrs. Jean (the Federal benefit rate for an individual) plus \$336 (\$168, one-half the Federal benefit rate for an eligible individual for each child), a total of \$672. We subtract the \$672 from Mrs. Jean's income of \$800, which leaves \$128 to be deemed to Mr. Bert and Mr. Davis. Each of the brothers is liable for rent in the boarding house (a commercial establishment) where they live. Each lives in his own household, receives no in-kind support and maintenance, and is eligible for the Federal benefit rate of \$336. The \$128 deemed income is deemed both to Mr. Bert and to Mr. Davis. As a result, each has countable income of \$108 (\$128 minus the \$20 general income exclusion). This is less than \$336, the Federal benefit rate for an individual, so that both are eligible for SSI. We use their income in a prior month to determine their benefit payments.

Example 4. The same situation applies as in example 3 except that one of Mrs. Jean's children is disabled and eligible for SSI benefits. The eligibility of the disabled child does not affect the amount of income deemed to Mr. Bert and Mr. Davis since the sponsor-to-alien and parent-to-child rules are applied

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independently. The child's countable income is computed under the rules in §416.1165.

[52 FR 8887, Mar. 20, 1987]

§416.1167 Temporary absences and deeming rules.

(a) *General.* During a temporary absence, we continue to consider the absent person a member of the household. A temporary absence occurs when—

(1) You, your ineligible spouse, parent, or an ineligible child leaves the household but intends to and does return in the same month or the month immediately following; or

(2) You enter a medical treatment facility and are eligible for either benefit payable under §416.212. We consider your absence to be temporary through the last month benefits under §416.212 were paid unless you were discharged from the facility in the following month. In that case, we consider your absence to be temporary through the date of discharge.

(b) *Child away at school.* If you are an eligible child who is away at school but comes home on some weekends or lengthy holidays and if you are subject to the control of your parents, we consider you temporarily absent from your parents' household. However, if you are not subject to parental control, we do not consider your absence temporary and we do not deem parental income (or resources) to you. Being subject to parental control affects deeming to you only if you are away at school.

(c) *Active duty military service.* If your ineligible spouse or parent is absent from the household due solely to a duty assignment as a member of the Armed Forces on active duty, we continue to consider that person to be living in the same household as you, absent evidence to the contrary. If we determine that during such an absence, evidence indicates that your spouse or parent should no longer be considered to be living in the same household as you, then deeming will cease. When such evidence exists, we determine the month in which your spouse or parent should no longer be considered to be living in the same household as you and stop deeming his or her income and resources beginning with the month following that month.

Example: Tom is a child who receives SSI. In January 1996, Tom's father leaves the household due solely to an active duty assignment as a member of the Armed Forces. Five months later in June 1996, while Tom's father is still on an active duty assignment, Tom's parents file for divorce. As a result, Tom's father will not be returning to live in Tom's household. Therefore, Tom's father should no longer be considered to be living in the same household with Tom. Beginning July 1, 1996, deeming from Tom's father will cease.

[50 FR 48579, Nov. 26, 1985, as amended at 61 FR 10280, Mar. 13, 1996; 62 FR 42411, Aug. 7, 1997; 72 FR 50874, Sept. 5, 2007]

§416.1168 How we deem income to you from your essential person.

(a) *Essential person's income.* If you have an essential person, we deem all of that person's income (except any not counted because of other Federal statutes as described in §416.1161(b)) to be your own unearned income. If your essential person is also your ineligible spouse, or if you are a child whose essential person is your ineligible parent, we apply the essential person deeming rules in this section. See §416.1169 for the rules that apply when an ineligible spouse or parent ceases to be your essential person.

(b) *Determining your eligibility for an SSI benefit.* We apply the exclusions to which you are entitled under §§416.1112 and 416.1124 to your earned income and to your unearned income which includes any income deemed from your essential person. After combining the remaining amounts of countable income, we compare the total with the Federal benefit rate for a qualified individual (see §416.413) to determine whether you are eligible for an SSI benefit.

(c) *Determining your SSI benefit amount.* We determine your SSI benefit amount in the same way that we determine your eligibility. However, in following the procedure in paragraphs (a) and (b) of this section we use your essential person's income that we deemed to you in the second month prior to the current month. *Exception:* Beginning with the month in which you no longer have your essential person, we do not use any of the income deemed to you from that essential person in a prior month to determine the amount of your benefit (see §416.1160(a)(3)(ii)(C)).